

IN THE UNITED STATES DISTRICT COURT
 FOR THE NORTHERN DISTRICT OF CALIFORNIA

SUSAN MAE POLK,

Plaintiff,

v.

DEPUTY JAMES CAVIN, et al.,

Defendants.

No. C 08-1483 MMC (PR)

**ORDER GRANTING IN PART AND
 DENYING IN PART PLAINTIFF'S
 MOTION TO COMPEL DISCOVERY
 FROM OFFICE OF CONTRA COSTA
 COUNTY PUBLIC DEFENDER;
 GRANTING PLAINTIFF'S MOTION
 TO LIMIT SERVICE OF
 DISCOVERY PLEADINGS;
 DENYING PLAINTIFF'S REQUEST
 FOR REFUND OF COURT FILING
 FEES; DENYING AS MOOT
 PLAINTIFF'S REQUEST FOR
 COURT CALENDARING
 INFORMATION; GRANTING
 PLAINTIFF'S REQUEST FOR CASE
 DOCKET; DIRECTIONS TO CLERK**

**(Docket Nos. 132, 133, 135, 145, 146,
154)**

On March 17, 2008, plaintiff, a California prisoner then incarcerated at the Central
 California Women's Facility in Chowchilla, California ("CCWF"), and proceeding pro se,
 filed the above-titled civil rights action under 42 U.S.C. § 1983.¹ Thereafter, by order filed
 April 30, 2009, the Court found the allegations in plaintiff's third amended complaint

¹ Plaintiff currently is incarcerated at Valley State Prison for Women ("VSPW").

(“TAC”) when liberally construed, stated claims for excessive force and supervisory liability against Contra Costa County Sheriff’s Deputy James Cavin, Deputy Lt. Matt Chertkow, and Sheriff Warden Rupf (collectively “County Defendants”). The Court also found the TAC stated a claim against various prison officials at CCWF (“State Defendants”), for denial of access to the courts.

On March 10, 2010, the Court dismissed plaintiff’s claims and entered judgment for all defendants. On August 17, 2011, the Ninth Circuit issued an opinion reversing the dismissal and remanding for further proceedings. Thereafter, on September 23, 2011, the Court reopened the case and informed the parties they could take discovery in accordance with the Federal Rules of Civil Procedure. Now pending before the Court are: (1) plaintiff’s motion to compel discovery from the Office of the Contra Costa County Public Defender; (2) plaintiff’s motion to limit service of discovery pleadings; (3) plaintiff’s request for a refund of court filing fees; (4) plaintiff’s request for information as to the noticing and hearing of motions; and (5) plaintiff’s request for a copy of the case docket.²

A. Plaintiff’s Motion to Compel

On February 16, 2012, plaintiff filed a motion to compel discovery from a third party, specifically the Office of the Contra Costa County Public Defender. (Docket No. 132.) On March 5, 2012, plaintiff re-filed the motion. (Docket No. 133.) Therein, plaintiff states that on August 29, 2003, in the “anteroom” of the state superior court, defendant Sheriff’s Deputy James Cavin struck her in front of her appointed Assistant Public Defender Laurie Mont (“Mont”). Plaintiff further states that the attack broke her elbow and that on or about August 29, 2003, the Office of the Public Defender sent an investigator to photograph plaintiff’s injuries. Plaintiff has served a subpoena duces tecum on the Office of the Contra Costa County Public Defender, seeking the investigator’s file and any other material pertaining to the August 29, 2003 incident. (Docket No. 133, Ex. A.)

² Also pending are: (1) the State Defendants’ motion to dismiss or sever; (2) the County Defendants’ motion for summary judgment; and (3) plaintiff’s motion to compel discovery from the Superior Court, which motions will be addressed in a separate order.

1 In response thereto, the Office of County Counsel for Contra Costa County (“County
 2 Counsel”) filed a declaration by Terri A. Mockler (“Mockler”), custodian of records for the
 3 Office of the Public Defender (Docket No. 141, Ex. A); in said declaration, dated
 4 December 23, 2011, Mockler states the Office of the Public Defender has no records
 5 described in the subpoena duces tecum. Concurrent therewith, however, County Counsel
 6 submitted a declaration, dated March 19, 2012, by Robin Lipetzky (“Lipetzky”), Public
 7 Defender for Contra Costa County (Docket No. 142); Lipetzky states therein that she
 8 conducted a further search after she received plaintiff’s March 5, 2012 “Additional
 9 Declaration in Support of Motion to Compel,” and that, in the course of said search, she
 10 located a memorandum Mont had prepared regarding plaintiff’s August 29, 2003 court
 11 appearance. (See *id.*) Lipetzky characterizes the document as a “work product
 12 memorandum” (*id.* at 2) and lists it in a privilege log attached to her declaration (Docket No.
 13 142, Ex. A). Lipetzky further states that, due to a conflict, the Office of the Public Defender
 14 was relieved as counsel for plaintiff in her 2003 criminal case and that any other files
 15 pertaining to the case were provided to plaintiff’s subsequent attorney.

16 Assuming, arguendo, the above-referenced memorandum constitutes attorney work
 17 product, the Court finds said document is subject to discovery by plaintiff. Although an
 18 attorney may assert work product protection in his or her own right even if the client has not
 19 directed the attorney to do so, an attorney “has no right to withhold information that the client
 20 directs the attorney to disclose [] to the client.” See Schwarzer, Tashima & Wagstaffe,
 21 Federal Civil Procedure Before Trial, §§ 11:915-11:916 (2011) (citing Martin v. Valley Nat.
 22 Bank of Arizona, 140 F.R.D. 291, 321 (S.D.N.Y. 1991); see also Spivey v. Zant, 683 F.2d
 23 881, 885 (5th Cir. 1982) (holding habeas petitioner’s former attorney could not rely on work
 24 product doctrine to refuse to disclose attorney’s files subpoenaed by petitioner to support
 25 claim challenging court order; noting work product doctrine “pertains . . . when the materials
 26 are sought by an adversary of the attorney’s client”).

27 Accordingly, plaintiff’s motion to compel production of the memorandum listed as
 28 “attorney work-product” in the privilege log attached as Exhibit A to the Lipetzky Declaration

1 will be granted. As it appears the Office of the Public Defender possesses no other documents
2 responsive to plaintiff's subpoena duces tecum, plaintiff's motion to compel will be denied as
3 to any other requested documents.

4 B. Plaintiff's Motion to Limit Service of Discovery Pleadings

5 On March 5, 2012, plaintiff, citing Rule 5(a) of the Federal Rules of Civil Procedure,
6 moved to "limit service of discovery pleadings" (Docket No. 135), by which filing plaintiff
7 seeks an order permitting her: (1) to serve discovery requests and responses that are directed
8 to the County Defendants only upon counsel for the County Defendants, and (2) to serve
9 discovery requests and responses that are directed to the State Defendants only upon counsel
10 for the State Defendants. In support thereof, plaintiff explains that her limited access to paper
11 and other supplies makes it difficult for her to serve all parties to the action. (Docket No.
12 145.) Defendants have submitted statements of non-opposition to plaintiff's motion to limit
13 service in the manner requested. (Docket Nos. 151, 152.) Accordingly, good cause
14 appearing, said motion will be granted.

15 C. Plaintiff's Request for Refund of Court Filing Fee

16 In its August 17, 2011 opinion, the Ninth Circuit stated: "Defendants shall bear the
17 costs on appeal." (See Docket No. 83 at 3.) Thereafter, plaintiff submitted a bill of costs
18 seeking: (1) reimbursement in the amount of \$9.24, the sum that had been deducted from her
19 prison trust account and applied to the filing fee for the appeal, and (2) payment by defendants
20 of the balance of such filing fee. On December 29, 2011, the Clerk of Court taxed the
21 requested costs (Docket No. 121), and plaintiff confirms that defendants have issued a check
22 to her in the amount of \$9.24 and paid the balance of her filing fee. (Docket No. 146.)
23 Plaintiff states, however, that VSPW thereafter deducted another \$20.00 from her prison trust
24 account as payment toward said fee, for which sum plaintiff seeks a refund. (*Id.*)

25 Contrary to plaintiff's assertion, the \$20.00 deduction was not applied to the fee for the
26 filing of the appeal. Rather, the funds were applied to the filing fee owed for the filing of the
27 complaint in the district court. As stated in this Court's April 28, 2008 order granting plaintiff
28 leave to proceed in forma pauperis (Docket No. 4), the total filing fee that ultimately will be

1 due in the instant action is \$350.00, and that the funds for payment of said fee are to be taken
2 from monies credited to plaintiff's prison trust account.

3 Accordingly, plaintiff's request for a refund will be denied.

4 D. Plaintiff's Request for Court Calendaring Information

5 Plaintiff requests information as to the Court's hearing calendar and inquires as to
6 whether she can notice motions on that calendar and appear at the hearings telephonically.
7 (Docket No. 154.) To date, all motions filed in the instant action have been appropriate for
8 decision on the parties' written submissions. Consequently, unless otherwise ordered
9 hereafter, all such motions will be deemed submitted on the papers on the date the reply is
10 due. Accordingly, plaintiff's request for calendaring information will be denied as moot.

11 E. Plaintiff's Request for Case Docket

12 Plaintiff's request for a copy of the docket in this action (Docket No. 154) will be
13 granted.

14 **CONCLUSION**

15 For the foregoing reasons, the Court orders as follows:

16 1. Plaintiff's motion to compel discovery from the Office of the Contra Costa County
17 Public Defender is hereby GRANTED IN PART and DENIED IN PART as follows:

18 To the extent plaintiff seeks discovery of the memorandum described as attorney work
19 product in the privilege log attached as Exhibit A to the Lipetzky Declaration, the Office of
20 the Contra Costa County Public Defender is directed to make said document available to
21 plaintiff within 14 days of this order; in all other respects, the motion is DENIED.

22 2. Plaintiff's motion to limit service of discovery pleadings is hereby GRANTED.

23 3. Plaintiff's request for a refund of her court filing fee is hereby DENIED.

24 4. Plaintiff's request for calendaring information is hereby DENIED as moot.

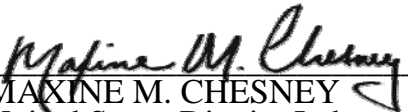
25 5. Plaintiff's request for a copy of the docket in the instant action is hereby
26 GRANTED; the Clerk is DIRECTED to send plaintiff a copy of the case docket at plaintiff's
27 most recent address of record.
28

1 6. The Clerk is further DIRECTED to serve a copy of this order on the Office of
2 County Counsel for Contra Costa County, 651 Pine Street, 9th Floor, Martinez, CA 94553.

3 This order terminates Docket Nos. 132, 133, 135, 145, 146, and 154.

4 IT IS SO ORDERED.

5 DATED: May 2, 2012

6 
MAXINE M. CHESNEY
United States District Judge